



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: B-223055

File: Petchem Marine Management Inc.

Date: July 16, 1986

DIGEST

Protest concerning alleged solicitation improprieties apparent before the submission of initial proposals is untimely when filed more than 3 months after the closing date for submission of initial proposals; neither inquiry before this date nor list of exceptions in letter submitted with initial proposal constitutes a timely agency-level protest.

DECISION

Petchem Marine Management, Inc. protests the award of any contract under request for proposals (RFP) No. NO0140-85-R-BE57, issued by the Naval Regional Contracting Center for the furnishing of tug services for docking and undocking submarines, barges, and ships at the Naval Submarine Base, New London, Groton, Connecticut.

We dismiss the protest as untimely. The RFP was issued November 21, 1985; the closing date for receipt of initial proposals was January 21, 1986. The protest was filed with our Office on May 12, 1986.

Petchem contends that the solicitation contains improprieties and does not specify the agency's needs in sufficient detail to promote full and open competition in accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 10.002 (1985). Petchem contends that the agency's choice of a requirements-type contract and the conditions contained therein adversely affects price and the competition base and will place the successful contractor in an unfair and prejudicial financial position.

Specifically, Petchem argues that the RFP should guarantee that the Navy will order at least 75 percent of the estimated quantity of services. Among the firm's other objections is the fact that the solicitation allows the successful contractor only 30 days to modify its tugboat

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for handling of submarines; Petchem believes between 42 and 57 days will be required. The firm also objects to the Navy's failure to include solicitation provisions concerning inspection of the vessel, the lack of a requirement for propeller guards, and the Navy's refusal to allow the tug to be used for other commercial purposes.

The agency argues that Petchem's protest to our Office is untimely, since it is based on alleged improprieties in the solicitation, but was not filed until after the closing date for receipt of initial proposals as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1986). In its initial submission, Petchem asserted that "Because Petchem Marine Management has not yet submitted a proposal in response to the solicitation, the protest is timely." The agency points out that this assertion is incorrect, since Petchem submitted a proposal on January 21, 1986; it did not, however, respond to the Navy's request that it submit a best and final offer by May 15, 1986.


We agree with the Navy that the alleged improprieties complained about by Petchem, including the type of contract and the lack of any minimum ordering obligation, were apparent before the closing date for receipt of initial proposals. IMODCO, B-216259, Jan. 11, 1985, 85-1 CPD ¶ 32. Although the Navy issued four amendments to the solicitation, none of the things about which Petchem now complains as affected by these amendments.

In its comments on the agency report, Petchem states that it expressed its concerns to the Navy upon issuance of the RFP. The record indicates that in a letter dated December 9, 1985, the firm asked, among other things, whether propeller guards would be required. We regard this as merely an inquiry, however, and not a timely protest to the agency. Petchem further alleges that Navy officials encouraged it to submit an initial offer with whatever exceptions it deemed necessary.

We cannot regard these exceptions, set forth in a letter dated January 20 and attached to Petchem's proposal, as a timely agency-level protest either. See Litton Datamedix, B-219731, Sept. 23, 1985, 85-2 CPD ¶ 322. Moreover, none of the exceptions taken concerns the same alleged deficiencies as Petchem iterates in its protest to our Office. Petchem first argued that the Navy should guarantee a minimum number of hours of work in a letter to the agency dated April 3, 1986, although the fact that award would be based on estimated hours, rather than a guaranteed number of hours, was apparent from the solicitation as issued the previous January.

In an April 28, 1986 letter to the Navy, Petchem indicated that unless the RFP was changed to include such a guarantee, Petchem would decline to submit a best and final offer. Although Petchem's subsequent protest was filed here before the due date for best and final offers, for the reasons indicated above, we find it should have been filed either with our Office or the agency before the due date for initial proposals.

The protest is dismissed.

A handwritten signature in cursive script that reads "Ronald Berger". The signature is written in black ink and is positioned above the printed name and title.

Ronald Berger
Deputy Associate
General Counsel